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## SACHS et al. v. OWINGS.

June 14, 1917.

[92 S. E. 997.]

**1. Vendor and Purchaser (§ 130 (1)\*)—Marketable Title—Sufficiency of.**—Where the vendor of real estate agrees to deliver to the purchaser a good and sufficient deed, with general warranty and covenants of title, the purchaser is not entitled to a record title, nor one shown to be good by an abstract of title, but only a marketable one.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 245.\* 13 Va.-W. Va. Enc. Dig. 496.]

**2. Vendor and Purchaser (§ 116\*)—Rescission by Purchaser—Defect in Title.**—A vendee may elect to rescind a contract, whereby the vendor agrees to convey a marketable title on the payment of the purchase price, without tendering an unpaid balance of purchase money, or doing any further act to complete it, if his vendor cannot on the day fixed, for completing the contract, convey such title.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 205-208.\* 13 Va.-W. Va. Enc. Dig. 546.]

**3. Vendor and Purchaser (§ 130 (2)\*)—"Marketable Title"—Definition.**—A vendee, who is entitled only to a marketable title, can demand only such title as a reasonably well informed and intelligent purchaser, acting upon business principles, would be willing to accept.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 246.\* 13 Va.-W. Va. Enc. Dig. 496.]

For other definitions, see Words and Phrases, First and Second Series, Marketable Title.]

**4. Vendor and Purchaser (§ 130 (8)\*)—Marketable Title—Incumbrances.**—Where an incumbrance is definite, does not exceed the unpaid purchase money due, is presently payable, and does not expose the vendee to litigation, it does not render a title unmarketable, as he can apply the unpaid purchase money to its removal.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 246.\* 13 Va.-W. Va. Enc. Dig. 506.]

**5. Vendor and Purchaser (§ 130 (8)\*)—Marketable Title—Incumbrances.**—The existence of judgment liens for definite amounts unreleased of record, on the date fixed for the completion of the contract, but barred by the statute of limitations, and of a lien for unpaid taxes, the liens aggregating a less amount than the purchase money due, and all presently payable, does not render a title unmarketable.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. § 246.\* 13 Va.-W. Va. Enc. Dig. 496.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**6. Vendor and Purchaser (§ 130 (9)\*)—Marketable Title—Easement.**—An easement of a telephone company to maintain its line over the land visible at the time of making the contract does not render the title unmarketable, as in such case the purchaser is presumed to have taken its existence into consideration in fixing upon the amount of the purchase money.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 496.]

**7. Vendor and Purchaser (§ 130 (9)\*)—Marketable Title—Easement.**—An easement of a telephone company to maintain its line over the land does not render the title unmarketable, where it enhances the market value of the land.

[Ed. Note.—For other cases, see 13 Va.-W. Va. Enc. Dig. 496.]

**8. Contracts (§ 239\*)—Modification of Contract—Parol Agreement.**—The common-law rule that an executory contract under seal can be modified or abrogated only by an instrument of equal dignity has not been relaxed at law.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 1124.\* 3 Va.-W. Va. Enc. Dig. 415, 440; 7 Va. Law Reg. 204.]

**9. Vendor and Purchaser (§ 82\*)—Rescission of Contract—Unexecuted Agreement.**—The obligation of a contract under seal, for the sale of land, cannot be released at law by an unexecuted parol agreement to cancel it.

[Ed. Note.—For other cases, see Vendor and Purchaser, Cent. Dig. §§ 138, 139.\* 3 Va.-W. Va. Enc. Dig. 415, 440; 7 Va. Law Reg. 204.]

Error to Hastings Court of Petersburg.

Action by Irvin Owings against Walter Sachs and another. Judgment for plaintiff, and defendants bring error. Reversed. *Lassiter & Drewry*, of Petersburg, for plaintiffs in error. *Hamilton & Mann*, of Petersburg, for defendant in error.

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ATLANTIC COAST LINE R. CO. *v.* TREDWAY'S ADM'X.

June 14, 1917. Rehearing Denied.

[93 S. E. 560.]

**1. Master and Servant (§ 88 (6)\*)—Railway Employee's Injury—Federal Employers' Liability Act—"Employee."**—An interlocker signal operator at crossing of two railroads hired by S. Railroad under agreement and in consideration of privilege of crossing defendant railroad, injured while attending to signal lights used only by defendant railway, was the latter's "employee," within the meaning of federal

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.